
(2005) 05 AHC CK 0014

In the Allahabad High Court

Case No : C.M.W.P. No's. 7504, 14784, 15557, 16154 and 24931 of 2005

Vijay Shankar Sharma and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-05-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backwards Classes) Amendment Act, 2002 — Section 3(2)
Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 — Regulation 11, 12, 20, 20(4), 77

Citation : (2005) 6 AWC 5666 : (2005) 3 ESC 2253

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : V.B. Upadhyaya, Rajeshwar Tiwari, Anil Kumar Singh, V.D. Dabey, K.N. Mishra and V.K. Singh, for the Appellant; Samir Sharma, for the Respondent

Final Decision : Disposed Of

Judgement

Ashok Bhushan, J.—All these writ petitions raise similar questions and have been heard together.

2. By these writ petitions, the advertisement dated 1st February, 2005 issued by the Additional Managing Director, Uttar Pradesh State Road Transport Corporation advertising 1500 posts of conductor for being filled up has been challenged. In Writ Petition No. 16154 of 2005 counter and supplementary counter affidavits, rejoinder and supplementary rejoinder affidavits have been exchanged, in some other writ petitions also counter and rejoinder affidavits have been exchanged. Writ Petition No. 16154 of 2005 is being treated as leading writ petition and it is sufficient to refer the pleadings in the aforesaid writ petition for deciding the controversy raised in all these writ petitions.

3. The petitioners in the above mentioned writ petitions are in two categories. The first category of petitioners are those petitioners who were imparted

apprenticeship training under the Apprenticeship Act, 1961 by Uttar Pradesh State Road Transport Corporation and were given the apprentice certificate and thereafter in the year 1998 they were engaged as contract conductor on the terms and conditions of the contract and had been discharging their duties on contract basis with the Corporation. The second category of the petitioners are those petitioners who were not imparted apprenticeship training by the Uttar Pradesh State Road Transport Corporation but who have been engaged on contract basis as conductor in the Uttar Pradesh State Road Transport Corporation. Both the categories of the petitioners have thus rendered services on contract basis on the post of conductor in the Uttar Pradesh State Road Transport Corporation.

4. Regulations have been framed, namely, Uttar Pradesh State Road Transport Corporation Employees (other than officers) Service, Regulations, 1981 regulating the recruitment to various posts in the Corporation.

5. The petitioners, who had taken apprentice certificate, had knocked the door of this Court for the second time, and in some cases for third time, claiming employment in the Corporation as conductor. Before noticing the controversy raised in the writ petition, it is relevant to note the earlier litigations which went up to the Apex Court culminating in several directions issued by the Apex Court with regard to selection/appointment of the conductors. Under the Apprenticeship Act, 1961, the petitioners were trained in different trades in the Uttar Pradesh State Road Transport Corporation. After taking training under the said Act, the petitioners represented to the Corporation that they should be given employment in the Corporation since they have received training and on the said training the public money has been sent. This Court on the writ petition filed by certain apprentices issued direction directing them to be employed by the Corporation. Against one of the judgments of this Court issuing direction to the Corporation to employ those who received training in the workshop of the Corporation, an appeal was filed before the Apex Court. The Apex Court disposed of the said appeal by issuing several directions. The judgment of the Apex Court in *Kripa Shankar Chatterji Vs. Gurudas Chatterjee and others*, . The Apex Court noted the circulars of the State Government dated 21.12.1977, 12.11.1989 and also the Government of India letter dated 23.3.1983 which desired reservation on 50% vacancies for apprentice trainees. The Apex Court observed that merely because training was imparted, no such promise can be grilled out on behalf of the Corporation so as to bind them to give appointment to all the apprentices. However, noticing the background of imparting apprentice training and the legitimate expectation of the trainees following directions were issued by the Apex Court in paragraphs 12 and 13 of the said judgment :

"12. In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training--

(1) Other things being equal, a trained apprentice should be given preference

over direct recruit.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in *Union of India v. N. Gargopal* would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The training institute concerned would maintain a list of the persons trained year wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior.

13. Insofar as the cases at hand are concerned, we find that the Corporation filed an additional affidavit in C.A. Nos. 4347-4354 of 1990 (as desired by the Court) on 20.10.1992 giving position regarding vacancies in the posts of conductors and clerks. If such posts be still vacant, we direct the Corporation to act in accordance with what has been stated above regarding the entitlement of the trainees. We make it clear that while considering the cases of the trainees for giving employment in suitable posts, what has been laid down in the Service Regulations of the Corporation shall be followed, except that the trainees would not be required to appear in any written examination, if any provided by the Regulations. It is apparent that before considering the cases of the trainees, the requirement of their names being sponsored by the employment exchange would not be insisted upon. Insofar as the age requirement is concerned, the same shall be relaxed as indicated above."

6. The direction of the Apex Court provided that other things being equal, a trained apprentice should be given preference over direct recruits. The Apex Court further held that the apprentice need not appear in the written examination, if any. The Apex Court also observed that while considering the entitlement of the trainees for giving employment in suitable posts, what has been laid down in the service regulations of the Corporation shall be followed, except that the trainees would not be required to appear in any written examination, if any provided by the Regulations. After the aforesaid direction of the Apex Court, the grievance of the trainees was that they were not engaged and the Apex Court took notice in contempt jurisdiction of the Apex Court and subsequently an affidavit was filed by the Corporation that appointment shall be finalised by the end of July, 1996, by the proportion. The contempt proceedings were disposed of by the Apex Court on 19.3.1996, copy of which order is on the record as Annexure-3 to the writ petition. The selection on the post of conductor took place in 1996-97. Some of the petitioners and other persons who had obtained training appeared in the said selection but the petitioners who are before this Court in these petitions were not selected whereas some of the

persons who had obtained the apprentice training were selected and appointed as conductor. With regard to 1997 selection, the apprentice trainees were not asked to appear in the written examination. They were interviewed and on the basis of some quality point marking selection was made and select list was published. In the year 1997, certain selection process were again initiated for filling up the posts for scheduled caste and scheduled tribe candidates which advertisement was also challenged in which writ petition order was passed by this Court making selection subject to result of the writ petition. After 1998, no regular selection for the post of conductor has been undertaken. The State Government on 25.10.2005 granted permission to fill up 3000 posts of conductor. In first phase it was provided that 1500 posts of conductor be filled up. Copy of the said Government Order has been filed as Annexure-13 to the writ petition. After the said Government Order dated 25th October, 2005, the advertisement in question dated 1st February, 2005 has been issued. A copy of the said advertisement has been filed as Annexure-14 to this writ petition. The advertisement provides that selection is to be made for 1500 posts out of which 400 posts are reserved for dependent of deceased employees. The breakup of 1500 posts has been given as S.C., S.T., O.B.C. and general category candidates. There is further division in the aforesaid four categories in which certain posts are said to be reserved for dependent of deceased employees. The advertisement provides that the selection process will be done in three steps. The first step is written test on the basis of which the candidates shall be considered in the second step. The second step of the selection is for calculating the marks of intermediate and certain other categories of employees mentioned in the advertisement and thereafter in third step interview is to be done. The select list is to be prepared in accordance with the marks obtained by a candidate in the second and third steps.

7. In all these writ petitions the said advertisement is under challenge and further prayer has been made seeking direction to absorb the petitioners on the basis of apprentice training. The persons who are working as contract conductor also prayed that they should be directed to be absorbed on the strength of their working on the post for a quite long time ranging from 2-8 years.

8. I have heard Sri V.B. Upadhyaya, Senior Advocate, assisted by Sri Rajeshwar Tiwari, Sri Anil Kumar Singh, Sri V.D. Dubey, Sri K.N. Mishra and Sri V.K. Singh for the petitioners and Sri Samir Sharma appearing for Uttar Pradesh State Road Transport Corporation.

9. The submissions raised by Counsel for the petitioners are almost similar. The principal submission advanced by the petitioners' Counsel is that petitioners being apprentice trainees from the Corporation itself they have right to be absorbed on the vacant post. It is contended that direction of the Apex Court in U.P. Road Transport Corporation's case (supra) meant absorbing the trainees preferring them over the direct recruits. The submission is that intention was to absorb each and every trainee and thereafter permit the direct recruitment. It is

contended that the contempt proceeding was initiated and thereafter the same was discharged on the affidavit filed by the Corporation that selection proceeding will be completed soon giving employment. The second limb of argument is that petitioners who are working as contract conductor have been discharging the duties on the post of conductor efficiently and by virtue of long experience acquired by them they are entitled to be absorbed on the vacant posts. It is contended that the appointment on contract basis was made only because there was no vacant post at the relevant time and to cope up the work of the Corporation, the petitioners were engaged and when they have stood at the time of need, they cannot be shown the door at this juncture when selection is going to take place. The third limb of the submission raised by the petitioners' Counsel is that the advertisement mentions reservation of 400 posts for dependent of deceased employee which is contrary to the provisions of U.P. Act No. 4 of 1994 (Uttar Pradesh Public Service (Reservation for S.C., S.T. and O.B.C.) Act, 1994). Elaborating the submission, it has been contended that dependent of deceased employee can be engaged by virtue of Regulation 77 but is not a kind of reservation as envisaged in the Regulation. It has been submitted that under Regulation 12 reservation envisaged is only for S.C., S.T. and O.B.C. candidates and no post can be reserved for dependent of deceased employee. Lastly, it has been contended that the basis and criteria for selection as laid down in the advertisement is unfair and unreasonable. It is contended that the criteria adopted in the advertisement does not give equal opportunity to the petitioners to compete. It is submitted that in second step of selection weight age has been given to various categories of candidates including retrench employees, sportsman, home guards, person having heavy motor vehicle driving licence, ITI (mechanic trade) and computer course having "O" level but there are no weight age provided for apprentices and the contract conductors who are discharging the same and similar duties. It is submitted that experience of a contract conductor has relevant nexus with the object of the selection that is to select the suitable candidate and by not giving any weight age to them, there is no fair selection. It is further submitted that apprentice training has been obtained in various trades which have relevant nexus with the duties of conductor and they were also entitled for some weight age to get an opportunity to have equal and fair competition with the candidates. Non giving of weightage to apprentices as well as to the contract conductors have been challenged. It is submitted that the object and purpose of the direction of the Apex Court to give preference shall be defeated in the event these persons are not given an opportunity to have equal competition with the open market candidates.

10. Sri Samir Sharma, learned Counsel appearing for the Corporation refuted the submissions raised on behalf of the petitioners and submitted that the Corporation cannot in block give appointment to apprentice trainees or contract conductor. He submitted that direction of the Apex Court was not to appoint them in block without subjecting them to undergo the process of selection. He submitted that object of the corporation is to select a suitable candidate for the

job and appointing the trainees in block will prejudice the interest of the Corporation. He submitted that the trainees have not to take any written examination and they are being interviewed along with other open market candidates by giving weightage to certain factors as indicated in the advertisement in step two selection. He submitted that categories which have to be given marks according to the advertisement has relevant nexus with the duties of conductor and none of the criteria's laid down therein are unreasonable. He submitted that contract conductors were appointed on contract basis and their service conditions were governed by the terms of the contract and they have no right to get straight way appointment without facing competition with others. Justifying the 400 posts for dependent of deceased employee, it has been submitted by Sri Sharma that in corporation for long time no appointments were made for dependent of deceased employee and large number of applications of eligible persons are waiting in queue for which 400 have been kept apart. He submitted that keeping apart 400 posts for that category of persons is not a kind of reservation. He contended that there is no ground to interfere with the advertisement.

11. Counsel for both the parties have relied on various decisions of this Court as well as the Apex Court which shall be considered while considering the respective submissions.

12. From the submissions of the parties, as noted above, following issues emerge for consideration by this Court in these writ petitions :

(i) Whether the apprentice trainees who were imparted training by the Corporation are entitled for appointment/ absorption on the post of conductor without they being subjected to any process of selection and whether the contract conductors are also entitled for appointment/absorption on the basis for their experience without undergoing the process of selection?

(ii) Whether apprentice trainees are entitled for any weightage for participation in second step selection and further as to whether the contract conductors are entitled for any weightage on the basis of their experience while computing the marks in the second step selection?

(iii) Whether 400 posts which have been reserved for dependent of deceased employees violates provisions of Act No. 4 of 1994 and the said reservation is impermissible under law?

(iv) Whether the criteria for making selection on the post of conductor permitting participation of apprentice trainees and contract conductors affects the equality clause and the preference to which they are entitled as per the judgment of the Apex Court in U.P. Road Transport Corporation's case (supra)?

13. The first issue is with regard to absorption/appointment of trainees in block without facing the selection. The order of the apex Court dated 12th January, 1995 itself dispels the submission that trainees were required to be appointed

without them subjecting to any process of selection. This fact is clear from the observation of the Apex Court in paragraph 3 of the said judgment which is extracted below :

"We make it clear that while considering the cases of the trainees for giving employment in suitable posts, what has been laid down in the Service Regulations of the Corporation shall be followed, except that the trainees would not be required to appear in any written examination, if any provided by Regulations."

14. The Regulations do provide for mode of recruitment in Regulation 11. Regulation 20 provides for procedure of direct recruitment. Regulation 20(4) of the Regulations is extracted below :

"20. Procedure for direct recruitment. (I)....

(4) The Selection Committee shall prepare a list of selected candidates in order of their proficiency as disclosed by the aggregate of marks obtained by them in the written test/trade test and/or interview. If two or more candidates obtain equal marks, the person getting higher marks in the written test/trade test shall be placed higher and where the selection is made on the basis of interview only, the person older in age shall be placed higher. The number of names in the list shall be large (but not larger by more than 5 per cent) than the number of vacancies. The Selection Committee shall forward the list to the appointing authority."

15. "From a perusal of Regulation 20(4), it is clear that the list of selected candidates has to be prepared on the basis of proficiency as disclosed by aggregate of marks obtained by them in the written/trade test and/or interview. In the present case since trainees are exempted from appearing in written examination they cannot be heard in saying that they will not face the interview. Shri Sharma has cited various judgments of this Court laying down that while considering the candidature of a candidate for a public employment, the interview is one of the best mode to adjudge the suitability of the candidate. Reliance has been placed on the judgment of the Apex Court in Lila Dhar Vs. State of Rajasthan and Others, ; Anzar Ahmed Vs. State of Bihar and others, In view of the clear observation of the Apex Court in judgment dated 12.5.1995, this submission cannot be accepted that the trainees have not to undergo any process of selection and they are required to be appointed directly on the vacant posts.

16. Now coming to the submission of contract conductors, it is true that they were engaged as contract conductors in the Corporation and they have been discharging the duties on the post. Neither any statutory rule nor any scheme has been pleaded or referred to entitling any contract conductors or a person worked on the said post to absorption/regularisation. The mere fact that petitioners have worked as contract conductors for several years maximum up to 8 years itself is not sufficient for en-block appointment without subjecting them

to process of selection. The Full Bench judgment of this Court in Lal Mohammed and Ors. v. Indian Railway Construction Co. Ltd., New Delhi and Ors. 2004 (3) ESC 1362, had laid down the above proposition. Thus issue No. 1 is answered in negative.

17. The issue number (ii) and (iv) are interrelated and are being considered together. The next issue which is to be considered is as to whether the advertisement by which selection process has been initiated gives equal opportunity to the trainees and the contract conductors to participate in the selection. From the advertisement as noted above, the selection has been divided into two stages, the second and third stage. Shri Sharma has pointed out that the marks which have been earmarked for second stage are 50 and interview is to take place of 25 marks. Thus, the selection is out of total 75 marks. Apart from interview 50 marks have been provided for various certificates and courses as mentioned in second stage. Sri Sharma has placed before the Court decision of the Board of Directors in which details have been provided for selection in second stage and third stage. For intermediate examination 20 marks are to be given to the candidates who have obtained 60% or above marks, 15 marks are to be given to the candidates who have obtained 45% marks or above and 10 marks are to be given to the candidates who have obtained 33% or above marks. For retrench employees maximum marks provided are 15 and for each year of service 5 marks. For the sportsman maximum marks are 5 and 10 additional marks are to be to ex-military man, home guard, person having heavy motor vehicle driving licence earlier to 1.4.2004, mechanic trade from I.T.I, and "O" level certificate in D.O.E.C. Computer course. The petitioners have challenged that the various items for which marks have been allocated have no rational basis and no nexus with object sought to be achieved. It has been submitted that giving additional marks to home guards is wholly arbitrary. It has further been contended that retrench employees are being given 15 marks whereas the contract conductors who have served for 8 years are not given any additional marks. Sri Sharma has invited attention of the Court to the duties of the conductors as provided in the Roadways Manual. He submitted that for elaborate duties as laid down in Paragraph 24 of the Roadways Manual, requirement of computer education, I.T.I. Mechanic Trade and licence of heavy motor vehicle driving licence cannot be said to be irrelevant. The conductor has to go with the bus and in the event of emergency giving additional weightage to driver of heavy motor vehicle and I.T.I, mechanic trade cannot be said to be irrelevant. Shri Sharma has pointed out that home guard has experience of handling the crowd and such experience can be utilise by the conductor. The other weightage for sportsman and retrench employee can also not be faulted, those are the weightage given in most of the public services.

18. Now coming to the certificate of apprentice trainees, the petitioners have emphatically submitted that the training imparted by Corporation in different trades is also relevant for the duties to be performed by the conductor. It has

been submitted that some trainees have been given apprentice training in mechanic trade and various other categories of trades which have relevant nexus with the duties and when the additional marks are being given to I.T.I, mechanic trade, heavy motor vehicle driving licence holder and home guard why can the said weightage be also not given to the apprentice trainees who have been given training in a relevant trade which has nexus with the duties of the conductor. The submission do have substance. The preference to the trainees as directed to be given by the Apex Court has to be given a purposeful interpretation. It is true that the Apex Court directed that preference be given when all other things are equal but by giving weightage to certain other similarly situated persons and denying the said weightage to the trainees is denying equal treatment to the trainees. The concept of giving preference embraces in itself the equal treatment by the Corporation. The Corporation has every right to examine and assess the candidates for the suitability of the job but denying the due weightage when similar weightage has been provided for in stage two selection is arbitrary. Things would have been otherwise if no stage two selection was envisaged and all candidates were treated similarly in that even the petitioners could not have been heard in saying that they should be given additional weightage. If their suitability would have been assessed in interview only and on equality of marks preference was to be given to the apprentice trainees they could not have complained any unfair treatment. The "preference" has come for consideration before the Apex Court in *The Secretary, Andhra Pradesh Public Service Commission Vs. Y.V.V.R. Srinivasulu and Others*, The apex Court in paragraph 10 has laid down :

"10. ... The word "preference" in our view is capable of different shades of meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not in an isolated or detached manner, ascribing a meaning of universal import, for all contingencies capable of an invariable application...."

19. The "preference" as envisaged in the present case embraces in itself the equal treatment and the Corporation cannot be permitted to adopt a procedure of selection which does not give an equal opportunity to the apprentices to participate in the selection.

20. Coming to the experience of the contract conductor, it is not denied that contract conductors have worked and discharged their duties for years together. The Counsel for the Corporation has not admitted the length of working of different petitioners which is according to him is subject to verification by the Corporation. It is not necessary to enter into the said controversy that has to be verified in accordance with the record of the Corporation. The question which is to be considered is as to whether when large number of categories of candidates have been given weightage of marks whether the contract conductors were not entitled for any weightage of marks on the basis of their experience who are performing the duties of conductors. The Corporation is assessing the capacity of

candidate to perform the duties of conductor, in such assessment experience gained by a person as conductor is neither irrelevant nor it can be said the it has no nexus with the object to be achieved. The experience of home guard, experience of ex-military man and experience of trade mechanic is being given due weightage then there is no rational for denying the said weightage to contract conductors. The apex Court in Bhagwati Prasad v. Delhi State Mineral Development Corporation 1990 (1) SCC 361, has observed following in paragraph 6 :

"6. ...The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability...."

21. The experience to a post has always been held to be relevant and petitioners who are working as contract conductor have made out a case of awarding some weightage to them in level two selection on the basis of their year of experience.

22. Sri Sharma has relied on a judgment of the Apex Court in Secy. (Health) Deptt. of Health and F.W. and Another Vs. Dr. Anita Puri and Others, for the proposition that higher qualified person is entitled for some weightage but that does not mean that he is entitled for automatic selection and appointment. In the said judgment following was laid down in paragraph 7 :

"7. ...The competence and merit of a candidate is adjudged not on the basis of the qualification he possesses but also taking into account the other necessary factors like career of the candidate throughout his educational curriculum, experience in any field in which the selection is going to be held, his general aptitude for the job to be ascertained in course of interview, extra-curriculum activities like sports and other allied subjects personality of the candidate as assessed in the interview and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post for which the selection is going to be held...."

23. The above observations of the Apex Court clearly support the contention of the petitioners that experience gained by the contract conductors while performing the duties of conductor is relevant for adjudging competence and merit of the candidate.

24. The protection of equality clause under Article 14 of the Constitution is available to every candidate who seeks employment against the advertisement in question. The direction of the apex Court in U.P. Road Transport Corporation's case (supra) was also to give preference to a trained apprentice other things being equal. The direction itself envisages equal treatment to the trained apprentice also while considering the candidature of other candidates including the direct recruits. The apex Court mandated giving preference other things being equal. The observation "other things being equal" itself demonstrates

equal treatment to the apprentices also. In the advertisement when in second stage selection certain experience are awarded with weightage marks ignoring similar kind of experience/certificates is unequal treatment meted on apprentice trainees. The direction of the apex Court clearly envisages equal treatment to the trainees also by giving preference. As observed above, the apprentice trainees in trades relevant to the duties of conductor are also entitled for weightage. Similarly, the experience gained by contract conductors also entitled for weightage and by giving such weightage only an equal treatment shall be given to apprentice trainees and contract conductors. The protection of equality clause under Articles 14 and 16 of the Constitution of India clearly support the claim of apprentice trainees and contract conductors to give weightage. In above view of the matter issues No. (ii) and (iv) have to be answered in affirmative.

25. In view of the foregoing discussions, petitioners have made out a case for direction to the Uttar Pradesh State Road Transport Corporation to consider the methodology for giving weightage in stage 2 selection to apprentice trainees and contract conductors. It is made clear that it is for the Corporation to find out relevant trades in which weightage are admissible. The Court has been informed that written test is to take place on 22nd May, 2005. The apprentice trainees have not to take part in the written test, which is only for the open category candidates. After decision is taken by the Corporation providing for weightage, necessary corrigendum be issued which may be done before the second stage selection starts.

26. Learned Counsel for the petitioners has pointed out that in view of the various litigations including the present writ petitions filed in this Court several petitioners have not made any application in pursuance of the advertisement. Prayer has been made that those petitioners including the apprentice trainees who had not to participate in first stage selection be permitted to submit an application for their consideration in second stage selection in response to the advertisement. Considering the facts and circumstances of the case including the fact that petitioners have challenged the advertisement, the petitioners who had not applied are entitled for an opportunity to make an application in response to the advertisement dated 1.2.2005 within three weeks from today. Sri Sharma although submitted that the time provided in the advertisement has already expired and it is not possible for the corporation to accept any application.

27. Now remains consideration of third issue as to whether the reservation of 400 posts for dependent of deceased employees in the advertisement is permissible. Sri V.B. Upadhyaya, Senior Advocate has placed reliance on various judgment of the apex Court, namely, Union of India (UOI) Vs. Joginder Sharma, Umesh Kumar Nagpal Vs. State of Haryana and Others, and Sanjay Kumar Vs. The State of Bihar and Others, . The submission of the petitioners is that compassionate appointment is deviation of normal recruitment process and the object of the appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis. The contention is that unless

penurious condition continues the claimant is not entitled for appointment. Relying on Sanjay Kumar's case (supra), it has been contended that there cannot be reservation of vacancy to such time as the claimant becomes major. Sri Sharma, as noted above, stated that 400 posts have been kept apart since (here are 400 eligible candidates waiting for appointment. A perusal of the advertisement shows that vacancies in each category, namely, S.C., S.T., O.B.C. and general has been divided into further two sub-categories, i.e. vacancies for the relevant category and for dependent of deceased employees. The advertisement is, thus, creating a different category of reservation and the post in particular category is divided accordingly. For example, general category posts under the advertisement are 641 whereas out of 641, 260 has been reserved for dependent of deceased employee. There cannot be any vertical reservation for dependent of deceased employees. The reservation if at all permissible can be horizontally but in the present, case under the regulations no kind of reservation for dependent of deceased employees is contemplated. The petitioners are right in their submission relying on Regulation 12 which deals with reservation provides:

"12. Reservation.--Reservation for candidates belonging to Scheduled Castes, Scheduled Tribes and other categories shall be made in accordance with the orders of the Government issued from time to time in regard to reservation in Government service."

28. Whereas Regulation 77 provides for appointment of dependent of deceased employee. The said regulation has undergone an amendment applying U.P. Public Services (Reservation for S.C., S.T. and O.B.C.) Act, 1994 for recruitment. The appointment to dependent of deceased employee is an exception to general rule and the reservation as provided in the advertisement is never contemplated. It is true that cases of eligible candidates have to be considered and they are entitled for appointment on vacant post. The Counsel for respondents has pointed out to the Government Order dated 25th January, 2005 copy of which has been filed as Annexure 1 to the supplementary counter-affidavit in which the State Government has directed that priority be given to the dependent of deceased employees if they fulfil all eligibilities of recruitment. The Government Order dated 25th January, 2005 read with Regulation 77 only provides for giving priority to dependent of deceased employee, i.e. the applicants who are eligible have to be considered and if they fulfil the entitlement they should be appointed on the vacant posts. Further, the reservation for dependent, of deceased employees categoriwise, i.e. S.C., O.B.C. and general also does not appeal to reason. When appointment of a dependent of deceased employee is to be considered, it has not to be considered qua a vacancy reserved for general, S.C. or O.B.C. It is made clear that this Court is not making any observation against the appointment of dependent of deceased employee. The Corporation may proceed to make appointment of the eligible candidates in accordance with law. The petitioners have also brought on the record certain appointments of dependent of deceased employee and have also prayed for quashing the said

appointment. The persons who have now been appointed as dependent of deceased employee, orders of whom have been challenged, are not before the Court nor there is any occasion to consider any individual appointment in this writ petition. The prayer of the petitioners for quashing the appointment of few persons made as dependent of deceased employees cannot be entertained in this writ petition. In view of the above, out of 1500 posts which have been advertised for selection, reservation of 400 posts of different category for dependent of deceased employee is unsustainable. It is, however, open to the Corporation to appoint dependent of deceased employee and while giving appointment on the basis of select list the appointment may be issued according to the vacancies available for appointment. The Counsel for the petitioner has placed reliance on a judgment of Anil Kumar Gupta and Others Vs. State of U.P. and Others, for the proposition that at best reservation for dependent can only be horizontally. The said judgment do support the contention of the petitioners.

29. Although, as observed above, it is found that reservation of 400 posts for dependent of deceased employee is invalid but it is not necessary to quash the advertisement on the above ground. The advertisement can still be sustained by deleting the said reservation from the advertisement. The respondents may proceed with the selection as per the advertisement dated 1st February, 2005 by treating the posts reserved for dependent of deceased employee to be included in the relevant category as mentioned in the advertisement. At this juncture, one more submission of the petitioners is required to be disposed of. It has been contended by the petitioners that reservation on the post for S.C., S.T. and O.B.C. is beyond 50%. Shri Sharma has explained that in the vacancies of 1500, backlog vacancies of S.T. i.e. 190 and of S.C. 28 has also been included and by calculating the said vacancies the reservation is less than 50%. The provisions of U.P. Act No. 4 of 1994 has undergone an amendment by U.P. Public Service (Reservation for S.C., S.T. and O.B.C.) Amendment Act, 2002 by which Section 3(2) has been amended and backlog vacancies have not to be included while determining the ceiling of 50%. I do not find any infirmity in the advertisement on above submission.

30. In the result, the writ petitions succeed and are partly allowed with following directions :

(i) The Uttar Pradesh State Road Transport Corporation shall consider giving weightage to the apprentice trainees in the relevant trade as well as to the contract conductors as per year of their experience which shall be included in the second stage selection while computing the marks of each candidates. Necessary corrigendum be issued by the Corporation before embarking upon the second stage selection.

(ii) The reservation of 400 posts for dependent of deceased employees in advertisement dated 1.2.2005 is quashed. For the purpose of selection the aforesaid vacancies shall be treated to be included in the relevant categories. The Corporation will be free to proceed to give appointment on compassionate

ground to the eligible candidates in accordance with law.

(iii) Those apprentice trainees who have not submitted their application in response to the advertisement dated 1.2.2005 shall be permitted to submit their application within three weeks from today to participate in the second stage selection.

Parties shall bear their own costs.